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**Pro Hac Vice application to be filed*

Attorneys for Plaintiff and the Alleged Class

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LORETTA WILLIAMS, individually and on behalf of all others similarly situated,

Plaintiff.

V.

AFTHA, LLC, a Florida limited liability company,

Defendant.

Case No. 3:22-cv-03790-TLT

**NOTICE OF MOTION AND MOTION
FOR LEAVE TO FILE PLAINTIFF'S
FIRST AMENDED CLASS ACTION
COMPLAINT AND TO EXTEND THE
DEADLINE TO SERVE ALL
DEFENDANTS**

Hearing: October 4, 2022

Time: 2:00 p.m.

Judge: Hon. Trina L. Thompson

Location: Courtroom 9, 19th Floor

PLEASE TAKE NOTICE that on October 4, 2022, counsel for Plaintiff Loretta Williams (“Plaintiff”) shall appear before the Honorable Trina L. Thompson or any judge sitting in her stead in Courtroom 9 of the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, and present Plaintiff’s Motion for Leave to File a First Amended Class Action Complaint and to Extend the Deadline to Serve All Defendants (“Motion”).

Plaintiff requests that the Court issue an Order granting Plaintiff leave to file a first

1 amended class action complaint, which adds Mark Benyaminov as an additional defendant.
2 Plaintiff also seeks a brief extension of the deadline to effectuate service of the amended complaint.

3 This Motion is based on this Notice and Motion, the attached Memorandum of Points and
4 Authorities and exhibits attached thereto, oral argument of counsel, and any other matter that may
5 be submitted at the hearing.

6
7 Respectfully submitted,

8 Dated: August 30, 2022

9
10 **LORETTA WILLIAMS**, individually and on behalf
11 of all others similarly situated,
12

13 By: /s/ Taylor T. Smith
14 One of Plaintiff's Attorneys

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Loretta Williams (“Williams” or “Plaintiff”) respectfully moves the Court for an Order permitting her to file a First Amended Class Action Complaint and to Extend the Deadline to Serve All Defendants. In support of this motion, Plaintiff states as follows:

1. Plaintiff filed her Class Action Complaint (“Complaint”) on June 27, 2022, against AFTHA, LLC (“AFTHA” or “Defendant”). (Dkt. 1.)

2. Fed. R. Civ. P. 4(m) requires that all defendants must be served “within 90 days after the complaint is filed[.]” As such, Plaintiff’s deadline to serve all defendants was September 26, 2022.

3. On July 19, 2022, Plaintiff served, via process server, AFTHA with the Complaint, Summons, and other initiating documents. (Dkt. 12.)

4. To date, AFTHA has failed to enter an appearance, responded to the Complaint, or reached out to Plaintiff's counsel.

5. Following a review of Defendant's business practices as well as further information produced by Plaintiff, it is apparent that Mark Benyaminov is the sole founder, manager, and CEO of Defendant AFTHA. It is also clear that Mr. Benyaminov personally oversaw, directed, and executed the telemarketing and unauthorized solicitation campaign at issue in this case and can be held personally liable for damages suffered by Plaintiff and the Class.

6. As such, Plaintiff now seeks to amend her Complaint to add Mark Benyaminov as an additional defendant.

7. “A district court ‘should freely give leave’ to amend a pleading ‘when justice so requires.’” *Willner v. Manpower Inc.*, No. 11-CV-02846-JST, 2013 WL 3339443, at *1 (N.D. Cal. July 1, 2013) (citing Fed. R. Civ. P. 15). “Four factors are commonly used to determine the propriety of a motion for leave to amend. These are: bad faith, undue delay, prejudice to the opposing party, and futility of amendment.” *Id.* (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.1987)). However, not “all factors merit equal weight”. *Id.* Instead, “it is the consideration of prejudice to the opposing party that carries the greatest weight.” *Id.* (citing *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.2003)).

8. Further, the Court may also extend the deadline for service of process upon finding good cause for failing to serve the defendant in the required time. *Gillis v. City & Cty. of San Francisco*, No. C 08-3871 SBA, 2009 WL 5215400, at *1 (N.D. Cal. Dec. 28, 2009). “Good cause means, at a minimum, excusable neglect.” *Id.* (citing *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.1991)). “The Court, in its discretion, may grant an extension even in the absence of good cause.” *Id.*

9. Here, Plaintiff moves the Court for leave to amend its complaint to include Mark Benyaminov as an additional defendant. Benyaminov received the benefit of, personally oversaw, directed, and executed the telemarketing and unauthorized solicitation campaign at issue in this case. Plaintiff's Proposed First Amended Complaint is attached hereto as Exhibit A. Permitting Plaintiff to file the First Amended Complaint would not prejudice any defendant. Indeed, AFTHA has completely refused to respond to the litigation in any fashion. Further, refusing to permit Plaintiff to add Mr. Benyaminov will require Plaintiff to dismiss the current action without prejudice, and re-file essentially the same action against both defendants. Granting Plaintiff leave to amend would have the same result.

10. Finally, given that the deadline to serve all defendants will expire prior to the noticed hearing date for this motion, on September 26, 2022, Plaintiff requests a brief 30-day extension of the deadline to serve all defendants. Given that AFTHA was properly served and failed to respond, it will not be prejudiced by this extension of the deadline for service.

Therefore, Plaintiff respectfully requests that the Court grant Plaintiff leave to file her First Amended Complaint, extend the deadline to serve all defendants, and for such additional relief as the Court deems necessary and just.

Respectfully submitted,

Dated: August 30, 2022

LORETTA WILLIAMS, individually and on behalf
of all others similarly situated,

By: /s/ *Taylor T. Smith*

One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above titled document was served upon counsel of record by filing such papers via the Court's ECF system on August 30, 2022.

/s/ Taylor T. Smith